



March 22, 2001

Ms. Ruth H. Soucy
Deputy General Counsel
Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2001-1138

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145226.

The Comptroller of Public Accounts (the "comptroller") received a request for a listing of taxpayers that were audited by the comptroller for all taxes during the period from October 1, 2000 through December 31, 2000, to include 17 data fields. You inform us that you are releasing categories 1 through 14, but assert that category 15, tax adjustment, is excepted from disclosure under section 552.101 of the Government Code, and that category 16, audit method 1, and category 17, audit method 2, are excepted from disclosure under section 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Accordingly, section 552.101 encompasses confidentiality provisions such as section 111.006(a)(2) of the Tax Code. Section 111.006(a)(2) provides that information "secured, derived, or obtained by the

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Comptroller or the attorney general during the course of an examination of the taxpayer's books, records, papers, officers, or employees, including an examination of the business affairs, operations, source of income, profits, losses, or expenditures of the taxpayer" is confidential. Tax Code § 111.006(a)(2).² You explain that the comptroller routinely releases to requestors the fact that an audit resulted in a deficiency or a credit, and that this information is being released to the requestor in this case. You argue, however, that the request for the "tax adjustment" could be construed as seeking the amount of adjustment, if any, for each audit, and that the amount of a deficiency or credit is made confidential under section 111.006 of the Tax Code. We agree, and therefore find that to the extent that requested category of information¹⁵ seeks the amounts of tax adjustments, these amounts are confidential under section 111.006(a)(2), and must be withheld under section 552.101. *See A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 680 (Tex. 1995) (concluding that it strikes proper balance between Tax Code and Public Information Act for comptroller to disclose that audits resulted in deficiency assessment or refund warrant, but not to disclose amounts of assessment or refund).

We note, however, that the representative sample of requested information you submitted to this office does not appear to contain the amount of a tax adjustment, but only whether there was in fact a credit, deficiency or no adjustment assessed. The submitted information revealing only the fact that an audit resulted in a deficiency, credit, or no adjustment must be released to the requestor. *Id.*

We next address your argument under section 552.108 of the Government Code. Section 552.108 states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). In *A & T Consultants, Inc.*, the Texas Supreme Court held that the comptroller could withhold from disclosure the audit method and audit group for a particular audit. The Supreme Court stated:

[t]he audit method and audit group remain confidential before, during, and after the comptroller undertakes taxpayer audits. *See id.* §§ 552.108, 552.116. Selecting an audit method constitutes the comptroller's choice about the strategy that he will use in an audit. Similarly, the basis for an audit's assignment to a certain group involves the comptroller's decision on how to maximize staff resources for law enforcement. Auditor groups within the comptroller's office specialize in certain types of audits. Consequently, revelation of the groups would allow taxpayers to ascertain, based on which group audits them, what they are being audited for prior to the completion of

²Chapter 151 of the Tax Code, which pertains to sales, excise, and use tax, also has a similar confidentiality provision. *See* Tax Code § 151.027(b). Thus, the information made confidential under section 151.027 is co-extensive with information deemed confidential under section 111.006.

an audit. Effective enforcement of the tax laws rests in part on a taxpayer's inability to predict the approach of a tax examination and the focus of an audit. Therefore, since disclosure of the choice of an audit method and the audit group will jeopardize the comptroller's effectiveness, these categories of information are excepted from release by TORA. See *id.* § 552.108.

Id. at 679.

We therefore believe that the release of audit method codes "would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Accordingly, the comptroller may withhold the requested information regarding such codes pursuant to section 552.108(a)(1) of the Government Code.³

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

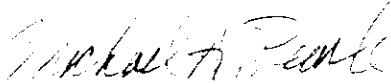
³You also request that we find as a "previous determination" that audit method codes in completed audits are excepted from disclosure by section 552.108 of the Government Code. We decline to issue such a ruling at this time.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 145226

Encl. Submitted documents

cc: Mr. Tommy J. Morgan
State Tax Management and Review
1411 Grinell
Dallas, Texas 75216
(w/o enclosures)